IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1884 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI BUDHIYABHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 27-8-1999 passed by the District Magistrate, Surat.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, there are five criminal cases registered against the petitioner and last offence registered against the petitioner was 12-2-1999 and he was released on bail on 14-4-2000. He has submitted that authority has passed the impugned order on 27-8-1999 and there is a delay of six months in passing the detention order which has not been explained. Even no affidavit has been filed either by the detaining authority. It has been held in a judgment delivered by this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. reported in 1997(1) G.L.H. 381 as under:

> "There appears too be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. Since no affidavit has been filed either by the detaining authority explaining satisfactorily the delay caused in passing the order of detention, the order of

detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 27-8-1999 passed by the District Magistrate, Surat against the detenu is hereby quashed. The detenu-Mahendrabhai Dudhiyabhai Chaudhari is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/